

ATTORNEY DOCKET: AUS920010938US1

PATENT

Section II: REMARKS

It is respectfully requested that the changes as noted above in Section I be made to the present application.

In the present application, a First Office Action was mailed on 6/28/2004 which rejected all of the claims. An Amendment was submitted on 10/11/2004 which amended the claims to distinguish from the earlier cited references. A second and Final Office Action was mailed on 12/15/2004 which repeated the rejections contained in the First Office Action. An Appeal was filed on 6/22/2005. In response to the Appeal Brief, the Final Office Action was withdrawn, the rejections presented in the Final Office Action were withdrawn, two new references were cited and all of the claims were again rejected under the new references.

More specifically, in the last Office Action, which was mailed on 9/8/2005, claims 1-2, 5-13 and 16-24 were rejected under 35 USC 102(e) as being anticipated by Misra et al (U.S. Patent 6,189,146 B1), claims 3-4 and 15 were rejected under 35 USC 103(a) as being unpatentable over a combination of Misra in view of Doherty (U.S. Patent 6,920,567 B1) and claim 14 was rejected under 35 USC 103(a) as being unpatentable over a combination of Misra in view of Nabahi (U.S. Patent 6,006,035). Misra and Doherty are new references and Nabahi was cited previously. Those rejections are respectfully traversed. However, in order to further the prosecution of the present application, and without waiving any of applicant's rights to argue the allowability of the originally presented claims in a subsequent appeal or other proceeding in the event that the Examiner does not concur that the present amendment places the application in condition for allowance, applicant has herein amended the claims for clarification purposes to place them in better condition for allowance or

ATTORNEY DOCKET: AUS920010838US1

PATENT

appeal.

The present invention provides a means by which software identification information, such as a user name or software package serial number, is extracted from a software package by determining the manner in which software modules are organized in the software package. In particular, the identification information is extracted from a software package by determining the manner in which the executable software modules are organized in a software package. With the present invention, user identification or the serial number identification of a particular software package may be ascertained by the manner in which the software package executable modules are arranged. In one example, the identification information is represented in binary format, i.e. a series of "1's" and "0s", and that identification information is applied to the serial sequencing of executable software modules in a software package such that one sequence of executable software modules represents a binary "one" while another sequence of executable software modules represents a binary "zero". **Thus by determining the relative sequencing of the executable software modules, one is enabled to re-assemble the binary identification information which is embedded into the software package and determine, for example, the licensed owner of the software package and/or the serial number of the software package.** Other formats may also be implemented.

As stated in applicant's specification, "instead of including user information in a separate code segment of the download, the transaction information is included in the structure or organization of the downloaded code or data. Every software package consists of code blocks, data areas, subroutines, methods and other such subcomponents. After a requesting user has furnished the requested information and agreed to the terms of a

ATTORNEY DOCKET: AUS920010938US1

PATENT

license agreement, the website will compile and link the various components of the software package together to form an executable module which is then downloaded to the user. Normally, when the various components of the software package are linked together to form the executable module, the exact order of placement or sequence of the components is usually not critical for the proper execution of the software. In accordance with the present invention however, the ordering and/or sequence of those components and/or sub-components is used to encode selected transaction information such that this encoded information can later be extracted from the licensed software and copies of the licensed software in the downloaded executable form. Thus, the ordering or sequence of the software package components is used to encode a serial number for the licensed software package as well as other useful information. The embedded information can be checked at a later time to determine if the software or data have been tampered with or if the usage pattern leads to suspicions about illegal copying. The embedded information can then be used to track down the source of the illegal copies".

With regard to the rejection of claims 1-2, 5-13 and 16-24 under 35 USC 102(e) as being anticipated by Misra et al, it is noted that Misra discloses a software licensing system which includes a license generator located at a licensing clearinghouse and at least one license server and multiple clients located at a company or entity. To prevent a license pack from being copied and installed on multiple license servers, the license generator assigns a unique license pack ID with the particular license server in a master license database kept at the licensing clearinghouse. To prevent an issued license from being copied from one client machine to another, the software license is assigned to a specific client by including a client ID within the license, i.e. the identity of the client is typed into the

ATTORNEY DOCKET: AUS920010938US1

PATENT

license agreement. The software license also has a license ID that is associated with the client ID in a database record kept at the license server. There is no mention or suggestion anywhere in Misra of **extracting ID information by determining an organization of the executable software modules within a software package.**

In the last Office Action, to support the allegation that Misra anticipates the present invention, specifically to support the alleged anticipation of the claim language "**determining an organization of said software modules** within said software package"(emphasis added), the Examiner cites column 6, lines 25-35 of Misra in which the following language appears: "The certifying authority performs a verification analysis of the **organization** to verify that it is a real entity and that the identification information is true and accurate" (emphasis added). In the cited Misra reference, just above the quoted reference, in column 6 line 31, it is stated that "The entity or **organization** that owns, or is responsible for, the license server 28 registers itself with an independent certifying authority that is trusted by both the **organization** and the clearinghouse" (emphasis added). It is submitted that an "organization", meaning a company, corporation or other entity, does not and cannot anticipate or suggest in any possible way an **organization** of executable software modules in a software package. Obviously, a word search was conducted for the word "organization" but the resulting reference was applied without due consideration of the different contexts and meanings for the word "organization". The cited Misra reference and the present application use two different meanings for the word "organization" and one has nothing to do with the other, much less does one provide anticipation for the other.

ATTORNEY DOCKET: AUS920010938US1

PATENT

In another language reference to Misra, column 12, lines 13-15 of Misra states that "The licenses are **organized** in the license cache 136 according to information about the license issuing authority and product ID (emphasis added)". This language in Misra clearly refers to listing licenses in a cache by issuing authority i.e. all from one authority get listed together before those from another authority. Listing licenses in a database or cache by entities, either alphabetically or otherwise, has nothing to do with organizing or **arranging executable software modules** in a software package to embed information about the software package whereby such information can be extracted by analysis of the order or sequence of the executable modules within the software package as is claimed by the applicant.

Misra does not extract software package identification information from the manner in which **executable** software modules in the software package are arranged or organized. With the present invention, **the arrangement of executable software modules within the software package contains the information needed to re-assemble the user identification information** of the software package. Misra, instead, maintains the software ID information in a database (Abstract, 2:40, 2:50, 3:19, etc.) and not in an arrangement of the executable software modules in a software package.

In order to further clarify the claims, all of the independent claims (1, 16 and 24) have been amended to recite that software package includes a number of executable software modules organized in a manner determined by said identification information, that an organization of said executable software modules within said software package is determined and that identification information from said organization of said executable software modules within said software package is

ATTORNEY DOCKET: AUS920010938US1

PATENT

extracted. It is noted that none of the cited references shows or suggests extracting ID information by determining an organization of the executable software modules within a software package.

Thus, it is submitted that, as herein amended, independent claims 1, 16 and 24, as well as claims 2 and 5-13 which ultimately depend from and include all of the limitations of claim 1, and also claims 17-23 which ultimately depend from and include all of the limitations of claim 16, are allowable under 35 USC 102(e) over Misra et al.

Next, with regard to the rejection of claims 3-4 and 15 under 35 USC 103(a) as being unpatentable over a combination of Misra in view of Doherty, it is noted that Doherty also maintains ID information in a database and not embedded in the software package by the manner in which the executable modules of the software package are organized as claimed by the applicant. Doherty discloses a digital content file (DCF) including a license control mechanism controlling the licensed use of digital content and a system and method for distributing licensable digital content files and licenses. The file access control mechanism includes a license monitor and control mechanism communicating with a dynamic license database and controlling use of the digital content and a license control utility providing communications between a user system and an external system to communicate license definition information and includes a graphical user interface. The license information may be stored initially in the dynamic license database or provided from an external system. With the present invention, the license information is embedded in the arrangement of the executable software modules of the software package not in a dynamic license database or provided from an external system as specified in Doherty. Neither Misra nor Doherty shows or suggests extracting ID information by determining an organization of the executable

ATTORNEY DOCKET: AUS920010938US1

PATENT

software modules within a software package as is disclosed and claimed by the applicant. Thus even a hypothetical combination of Misra and Doherty (for which there is no suggestion in either reference) falls short of suggesting, *inter alia*, the extracting ID information by determining an organization of the executable software modules within a software package and thus it is submitted that claims 3-4 and 15, which ultimately depend from and include all of the limitations of independent claim 1, are allowable under 35 USC 103(a) over a combination of Misra in view of Doherty.

Next, with regard to the rejection of claim 14 under 35 USC 103(a) as being unpatentable over a combination of Misra in view of Nabahi, it is noted that Nabahi was cited merely to allegedly show the use of a binary format. Applicant notes that Nabahi discloses neither the use of a binary format as used by the applicant, nor the use of extracted binary formatted organizational information to determine identification information embedded in the manner in which the executable software modules of a software package are arranged or organized as disclosed and claimed by the applicant. Thus even a hypothetical combination of Misra and Nabahi (for which there is no suggestion in either reference) falls short of suggesting, *inter alia*, the extracting ID information by determining an organization of the executable software modules within a software package and thus it is submitted that claim 14, which ultimately depends from and includes all of the limitations of independent claim 1, is allowable under 35 USC 103(a) over a combination of Misra in view of Nabahi.

Thus, it is submitted that claims 1-24, as herein presented, are believed to be in condition for allowance, an early notice of which is hereby requested. If any outstanding issues remain, or

ATTORNEY DOCKET: AUS920010938US1

PATENT

if the Examiner has any further suggestions for expediting the allowance of this application, and especially if one or more new references are cited, the Examiner is invited to contact the undersigned at the telephone number indicated below, prior to the issuance of another Office Action, in order to allow the applicant the opportunity to further amend the claims by Supplemental Amendment or Examiner's Amendment, as may be appropriate, to place the claims in condition for allowance. The Examiner's attention to this matter is greatly appreciated.

Respectfully submitted,

Robert V. Wilder

Robert V. Wilder (Tel: 512-246-8555)
Registration No. 26,352
Attorney for Applicants
4235 Kingsburg Drive
Round Rock, Texas 78681